

### **REMARKS**

The claims have been amended to expressly cover an aspect of the invention originally claimed in the grandparent application, but omitted therefrom and from the parent application, and one embodiment of which is depicted in Figure 8. However, at least Claim 1 is also drafted to read on a spirit level in which the second bubble vial is mounted at the very end of the level body.

Support for the claims can be found in the specification, particularly in the part describing Fig. 8 (page 5, second paragraph), in the figures and in the original claims (e.g. Claims 10 and 11) of the grandparent application. Accordingly, it is submitted that no new matter has been introduced by this Amendment.

It is noted that in the first Office Action in this case, the Examiner cited a large number of references, but only used rejections under 35 USC §103. Since none of the references was used by itself as a rejection under 35 USC §102, Applicants are able to argue that those claims originally cancelled and the newly submitted slate of claims are patentable over any possible combination of references as a result of secondary considerations.

A very lengthy response with arguments of patentability and with Rule 1.132 declarations from Messrs. Steiner, Szumer (one of the inventors), Datz, Kay, Bucks, Wist, and Golla, with extensive exhibits filed with the Szumer declaration, with economic exhibits filed with the Datz declaration, and with exhibits filed with the Kay declaration showing how the prior art bubble levels were used and the disadvantages thereof, and showing infringements by others was filed in the parent application Serial Number 10/202,605, now patent 6,748, on October 15, 2003 after an interview with the Examiner. That response in its entirety is incorporated herein by reference. A copy of that response is hereby proffered for filing in this application should the Examiner so request.

In addition, since the issuance of the '666 parent patent, the owner of this application was able to obtain a license from a competitor company that is about 200,000 times as big as it is. In addition licensing negotiations with a second competitor are currently underway and are expected to conclude shortly with a second license being taken. Finally, no known new infringements have occurred since the issuance of the '666 patent. These are additional secondary considerations of patentability of the present claims.

### **CONCLUSION**

Accordingly, entry and substantive favorable consideration of the amended claims is

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respectfully requested. The Examiner is respectfully requested to contact the undersigned attorney if it is believed that such contact will expedite the prosecution of this application.

Respectfully submitted,  
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